PURCELL *v.* WASHINGTON & O. D. RY., Inc.

March 16, 1922.

[111 S. E. 300.]

1. Railroads (§§ 328 (1), 338*)—Driver Held Negligent in Failing to Listen, and within Last Clear Chance Rule.—A count in a declaration for injuries to a one-horse buggy driver, showing that he did not slow down and listen after passing a point 150 yards from the crossing, and could not effectively look after passing that point, and that the operator of the train failed to give warning, but by the use of ordinary care could have discovered the driver's peril and avoided the collision, held to show contributory negligence in failing to listen, and to make a case under the last clear chance doctrine.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 591.]

2. Railroads (§§ 330 (4), 338*)—Driver Held Negligent in Failing to Look Out, and Not within Last Clear Chance Rule.—A count in a declaration for injuries to a one-horse buggy driver, alleging that he looked and listened at every point of vision, the only point being 150 yards from the crossing, which was so dangerous that defendant had agreed with the town to limit the speed to 4 miles an hour, but not alleging that the driver knew of the agreement which defendant violated by running the train too fast to stop in time, held to show contributory negligence in failing to look out for train, and to make no case under the last clear chance doctrine.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 591.]

3. Railroads (§ 350 (23)*)—Contributory Negligence of Buggy Driver in Failing to Stop to Listen Held for Jury.—A count showing that plaintiff, driving a one-horse buggy, drove slowly and listened intently, but could not effectively look even by going ahead after passing a point 150 yards from a dangerous crossing over which a train moved by electricity was run at a speed too fast to stop, and in violation of a rule limiting the speed to 4 miles an hour, but not alleging that he knew of the rule, held not to show contributory negligence as a matter of law, though he did not actually stop to listen.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 591.]

Appeal from Circuit Court, Loudoun County.

Action by N. Janney Purcell against the Washington & Old Dominion Railway, Incorporated, and from a judgment sustaining a demurrer to the plaintiff's declaration, and dismissing the case, the plaintiff appeals. Reversed, and remanded for further proceedings.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Chas. F. Harrison, of Leesburg, for plaintiff in error.

Wilton J. Lambert, of Washington, D. C., *C. Vernon Ford* and *Wilson M. Farr,* both of Fairfax, and *R. H. Yeatman,* of Washington, D. C., for defendant in error.

DIRECTOR GENERAL OF RAILROADS et al. *v.* HUBBARD'S ADM'R.

March 16, 1922.

[111 S. E. 446.]

1. Railroads (§ 5½*), New, vol. 6A Key-No. Series—Corporation Not Suable for Injury during Federal Control.—A judgment cannot be rendered against a railroad company for the death of an employee caused by a train operated by the Director General of Railroads.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 567.]

2. Master and Servant (§ 137 (4)*)—Failure to Notify Employee of Transfer of West-Bound Train to East-Bound Track Held Not Negligence.—Where a railroad signal maintainer was proceeding west in his motorcar on the west-bound track, and had passed the last telegraph station at which he could have been reached before the accident when a west-bound train was transferred to the east-bound track, failure to notify him of the change of tracks was not negligence which rendered railroad liable for his death when he set his motorcar over on the east-bound track on hearing the train, without looking to see which track it was on.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 687.]

3. Railroads (§ 137 (2)*)—Railroad Not Negligent in Using Double Tracks Interchangeably for Traffic in Different Directions.—Even though a railroad ordinarily used one of its double tracks for traffic in one direction, and the other for traffic in the opposite direction, it was not negligence for it, as it frequently did, to transfer a train to a track ordinarily used for trains moving in the opposite direction.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

4. Master and Servant (§ 278 (18)*)—Evidence Held to Show Locomotive Engineer Could Not Have Seen Employee at Curve.—Evidence held to show that the engineer of a train, which came out of a cut where the track was curving to the left and struck a signal maintainer, pushing his motorcar on the track while it was still on the curve, could not have seen the other employee if he had been looking constantly, so that his failure to see him was not negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 726.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.